

Appl. No. : 09/782,534  
Filed : February 13, 2001

## REMARKS

In response to the Restriction Requirement mailed September 22, 2003, Applicants elected, without traverse, the claims of Species 2 (Figure 18) for further examination. In the same response, Applicants cancelled Claims 32 (both of them), and added these same claims as Claims 51 and 52. Claims 1-31 and 33-52 are pending in the present application. In the Office Action mailed January 23, 2004, the Examiner withdrew from consideration Claims 7, 12-14, 18, 20, 22, 25, 28-31, 33-44, and 50-52.

### Claim Rejections - 35 U.S.C. § 102/103

In the Office Action mailed January 23, 2004, the Examiner rejected Claims 1-6, 8-11, 15-17, 19, 21, 23, 24, 26, 27, and 45-49 under 35 U.S.C. § 102(e)/103(a) as being anticipated by Reiley et al. (U.S. Patent No. 6,440,138). With regard to Claim 1, the Examiner asserts that Reiley et al. discloses an apparatus for performing a discectomy of an intact or damaged intervertebral spinal disc, the apparatus having an elongated discectomy instrument (such as 22, 110, etc. and their respective components), a cutting head (such as 22, 110, etc.) located in a distal portion of the discectomy instrument, means (such as via expansion and bending) for extending the cutting head laterally away from the axial disc opening toward or through the annulus of the intervertebral spinal disc, and operating means (such as 56).

Applicants respectfully traverse these rejections and the Examiner's characterization of the cited reference. Pending Claim 1 recites:

1. (currently amended): Discectomy apparatus for performing a discectomy of an intact or damaged intervertebral spinal disc, the intervertebral spinal disc having a disc body formed of a nucleus and annulus, through a trans-sacral axial bore extending cephalad and axially from a sacral position of a sacral vertebral body through one or more vertebral body and through a vertebral body endplate and axial disc opening into the nucleus of the intervertebral spinal disc, the apparatus comprising:

an elongated discectomy instrument having a discectomy instrument body extending between a discectomy instrument proximal end and instrument distal end, a cutting head located in a distal portion of the discectomy instrument, the instrument body and cutting head dimensioned to fit within and to extend through the axial bore, ~~and means for extending the cutting head laterally away from the axial disc opening toward or through the annulus of the intervertebral spinal disc; and~~

~~operating means coupled to the instrument body proximal end for operating the cutting head to form a disc cavity within the annulus, the disc cavity extending laterally and away from the disc opening within the annulus, or to form a disc space by further extension of the disc cavity through at least a portion of the annulus.~~

an anterior tract sheath having a shaped distal end with an engagement structure for engaging an anterior surface of the sacral vertebral body;

wherein the shaped distal end of the anterior tract sheath facilitates anchoring of the anterior tract sheath into the anterior surface of the sacral vertebral body from a para coccygeal skin access point.

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Applicants respectfully submit that Reiley et al. fail to teach or suggest the unique combination of features recited by Claim 1. For example, Reiley et al. do not teach an anterior tract sheath having a shaped distal end, such as, for example, an angled or beveled distal end, that facilitates anchoring of the anterior tract sheath into the anterior surface of a sacral vertebral body from a skin access point, such as, for example, a para coccygeal skin access point. In addition, Reiley et al. does not teach an engagement structure for engaging the anterior surface of the sacral vertebral body.

Claims 2-5, 48, and 49, which depend from Claim 1, are believed to be patentable for the reasons stated above with respect to Claim 1, and because of the additional limitations set forth therein. Accordingly, Applicants respectfully request that the rejection of Claims 1-5, 48, and 49 be withdrawn.

Claims 6, 8-11, 15-17, 19, 21, 23, 24, 26, 27, and 45-47 are cancelled herein, without prejudice. Although Applicant respectfully disagrees with the propriety of the rejections entered in connection with these claims, Applicant has cancelled these claims for the procedural objective of simplifying the claims under examination and allowing the remaining claims to proceed toward issuance. Applicant reserves the right to pursue claims of the same or similar scope to those cancelled herein, in one or more continuing patent applications.

In view of the foregoing, Applicant respectfully submits that the pending claims of the present application are in condition for allowance, and such action is earnestly solicited. If, however, any questions remain, the Examiner is cordially invited to contact the undersigned so that any such matter may be promptly resolved. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,  
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